

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TOTAL WEALTH MANAGEMENT,  
INC. et al.,

DefendantS.

Civil No. 15cv226-BAS (DHB)

**SCHEDULING ORDER**

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a telephonic Case Management Conference was held before Magistrate Judge David H. Bartick on September 8, 2015. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

**IT IS HEREBY ORDERED:**

1. Counsel shall refer to the Standing Order for Civil Cases for the Honorable Cynthia Bashant, which is accessible via the Court's website at [www.casd.uscourts.gov](http://www.casd.uscourts.gov).

2. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **November 25, 2015**.

3. Plaintiff(s) (or the party(ies) having the burden of proof on any claim) shall serve on all parties a list of experts whom that party expects to call at trial on or

1 before **December 4, 2015**. Defendant(s) (or the party(ies) defending any claim,  
2 counterclaim, crossclaim, or third party claim) shall serve on all parties a list of  
3 experts whom that party expects to call at trial on or before **December 18, 2015**. On  
4 or before **January 8, 2016**, any party may supplement its designation in response to  
5 any other party's designation, so long as that party has not previously retained an  
6 expert to testify on that subject. Expert designations shall include the name, address,  
7 and telephone number of each expert, and a reasonable summary of the testimony the  
8 expert is expected to provide. The list shall also include the normal rates the expert  
9 charges for deposition and trial testimony.

10 The parties must identify any person who may be used at trial to present  
11 evidence pursuant to Rules 702, 703 or 705 of the Federal Rules of Evidence. This  
12 requirement is not limited to retained experts.

13 **Please be advised that failure to comply with this section or any other**  
14 **discovery order of the Court may result in the sanctions provided for in Fed. R.**  
15 **Civ. P. 37, including a prohibition on the introduction of experts or other**  
16 **designated matters in evidence.**

17 4. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served  
18 on all parties on or before **March 11, 2016**. Any contradictory or rebuttal information  
19 shall be disclosed on or before **April 8, 2016P**

20 5. . In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty on the parties to  
21 supplement the expert disclosures made pursuant to Fed. R. Civ. P. 26(a)(2)(B) by the  
22 time that pretrial disclosures are due under Fed. R. Civ. P. 26(a)(3) (discussed below).  
23 This disclosure requirement applies to all persons retained or specially employed to  
24 provide expert testimony, or whose duties as an employee of the party regularly  
25 involve the giving of expert testimony.

26 **Please be advised that failure to comply with this section or any other**  
27 **discovery order of the Court may result in the sanctions provided for in Fed. R.**  
28 **Civ. P. 37, including a prohibition on the introduction of experts or other**

1 **designated matters in evidence.**

2 6. All discovery shall be completed by all parties on or before **May 6, 2016**.  
3 “Completed” means that all discovery must be initiated a sufficient period of time in  
4 advance of the cutoff date, so that it may be completed by the cutoff date, taking into  
5 account the times for service, notice, and response as set forth in the Federal Rules of  
6 Civil Procedure. The Court’s procedures for resolving discovery disputes are set forth  
7 in Magistrate Judge Bartick’s Civil Chambers Rules, which are posted on the Court’s  
8 website.

9 7. All motions, other than motions to amend or join parties, or motions *in*  
10 *limine*, shall be filed on or before **June 3, 2016**. Motions will not be heard or  
11 calendared unless counsel for the moving party has obtained a motion hearing date  
12 from the law clerk of the judge who will hear the motion. Be advised that the period  
13 of time between the date you request a motion date and the hearing date may be up to  
14 sixty (60) days. Please plan accordingly. Failure of counsel to timely request a  
15 motion date may result in the motion not being heard.

16 Any *Daubert* motions shall be filed along with motions for summary judgment  
17 unless no motions for summary judgment will be filed, in which case the parties may  
18 file *Daubert* motions along with motions *in limine*.

19 Briefs or memoranda in support of or in opposition to any pending motion shall  
20 not exceed twenty-five (25) pages in length without leave of the judge who will hear  
21 the motion. No reply memorandum shall exceed ten (10) pages without such leave of  
22 court.

23 8. Pursuant to Local Rule 7.1(f)(3)(c), **if an opposing party fails to file**  
24 **opposition papers in the time and manner required by Local Rule 7.1.e.2, that**  
25 **failure may constitute a consent to the granting of a motion or other request for**  
26 **ruling by the Court.** Accordingly, all parties are ordered to abide by the terms of  
27 Local Rule 7.1.e.2 or otherwise face the prospect of any pretrial motion being granted  
28 as an unopposed motion pursuant to Local Rule 7.1.f.3.c.

9. A Mandatory Settlement Conference shall be conducted on **August 15, 2016** at **10:00 a.m.** in the chambers of Magistrate Judge Bartick. Counsel shall submit settlement statements **directly** to Magistrate Judge Bartick's chambers no later than **August 8, 2016**.<sup>1</sup> The parties may either submit confidential settlement statements or may exchange their settlement statements. Each party's settlement statement shall set forth the party's statement of the case, identify controlling legal issues, concisely set out issues of liability and damages, and shall set forth the party's settlement position, including the last offer or demand made by that party, and a separate statement of the offer or demand the party is prepared to make at the settlement conference. **The settlement conference briefs shall not be filed with the Clerk of the Court.**

**All named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement shall appear in person at the conference.** The individual(s) present at the Mandatory Settlement Conference with settlement authority must have the unfettered discretion and authority on behalf of the party to: 1) fully explore all settlement options and to agree during the Mandatory Settlement Conference to any settlement terms acceptable to the party (*G. Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989)), 2) change the settlement position of a party during the course of the Mandatory Settlement Conference (*Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003)), and 3) negotiate a settlement without being restricted by any predetermined level of authority (*Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 596 (8th Cir. 2001)).

Governmental entities may appear through litigation counsel only. As to all other parties, appearance by litigation counsel only is not acceptable. Retained

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<sup>1</sup> Statements under 20 pages in length, including attachments and exhibits, shall be e-mailed to chambers at [efile\\_bartick@casd.uscourts.gov](mailto:efile_bartick@casd.uscourts.gov) or [efile\\_adler@casd.uscourts.gov](mailto:efile_adler@casd.uscourts.gov). Statements exceeding 20 pages in length, including attachments and exhibits, must be delivered directly to chambers.

1 outside corporate counsel shall not appear on behalf of a corporation as the party who  
2 has the authority to negotiate and enter into a settlement. **The failure of any counsel,**  
3 **party or authorized person to appear at the Mandatory Settlement Conference as**  
4 **required will result in the immediate imposition of sanctions.** All conference  
5 discussions will be informal, off the record, privileged, and confidential.

6 10. The parties must comply with the pretrial disclosure requirements of Fed.  
7 R. Civ. P. 26(a)(3) no later than August 29, 2016. **Please be advised that failure to**  
8 **comply with this section or any other discovery order of the Court may result in**  
9 **the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on the**  
10 **introduction of experts or other designated matters in evidence.**

11 11. Parties or their counsel shall serve on each other and file with the Clerk  
12 of the Court their Memoranda of Contentions of Fact and Law in compliance with  
13 Local Rule 16.1(f)(2) on or before August 29, 2016.

14 12. Counsel shall confer and take the action required by Local Rule 16.1.f.4.a  
15 on or before September 6, 2016.

16 13. Counsel for the Plaintiff(s) must provide opposing counsel with the  
17 proposed pretrial order for review and approval and take any other action required by  
18 Local Rule 16.1.f.6.a on or before September 12, 2016.

19 14. Written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3) pretrial  
20 disclosures shall be filed and served on or before September 12, 2016. **Please be**  
21 **advised that the failure to file written objections to a party's pretrial disclosures**  
22 **may result in the waiver of such objections, with the exception of those made**  
23 **pursuant to Rules 402 (relevance) and 403 (prejudice, confusion or waste of time)**  
24 **of the Federal Rules of Evidence.**

25 15. The proposed pretrial order shall be lodged with the district judge's  
26 chambers on or before September 19, 2016 and shall be in the form prescribed in  
27 Local Rule 16.1.f.6.c.

28 16. The final pretrial conference is scheduled on the calendar of the

1 Honorable Cynthia Bashant for Monday, **October 3, 2016** at **11:00 a.m.**

2 17. All motions *in limine* are due no later than **October 17, 2016.**

3 18. All responses to the motions *in limine* are due no later than **October 31,**  
4 **2016.**

5 19. The parties shall submit the following no later than **October 31, 2016:**  
6 (1) joint proposed jury instructions; (2) proposed verdict form; (3) *voir dire* questions;  
7 and (4) statement of the case.

8 20. A hearing for the motions *in limine* is scheduled for Monday, **November**  
9 **28, 2016** at **10:30 a.m.**

10 21. The parties shall exchange final exhibit and witness lists no later than  
11 **November 29, 2016.**

12 22. The trial in this matter shall commence on Tuesday, **December 6, 2016**  
13 at **9:00 a.m.**

14 23. The dates and times set forth herein will not be modified except for good  
15 cause shown.

16 24. Plaintiff's(s') counsel shall serve a copy of this order on all parties that  
17 enter this case hereafter.

18 IT IS SO ORDERED.

19 Dated: September 8, 2016

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21 DAVID H. BARTICK  
22 United States Magistrate Judge  
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